

In Their Words: Judges' Views on Federal Sentencing

- "Congress establishes the rules to be applied in sentencing; that is a legislative function. Judges apply those rules to individual cases; that is a judicial function. There can be no doubt that collecting information about how the sentencing guidelines, including downward departures, are applied in practice could aid Congress in making decisions about whether to legislate on these issues. There can also be no doubt that the subject matter of the questions, and whether they target the judicial decisions of individual federal judges, could amount to an unwarranted and ill-considered effort to intimidate individual judges in the performance of their judicial duties. We must hope that these inquiries are designed to obtain information in aid of the congressional legislative function, and will not trench upon judicial independence."
Chief Justice William H. Rehnquist, remarks before the Federal Judges Association Board of Directors Meeting, May 5, 2003.
- "This legislation, if enacted, would do serious harm to the basic structure of the sentencing guidelines system and would seriously impair the ability of courts to impose just and responsible sentences. Before such legislation is enacted, there should at least, be a thorough and dispassionate inquiry into the consequences of such actions."
Chief Justice William H. Rehnquist, letter to Senator Leahy, April 7, 2003, responding to a request for his view on the Child Abduction Prevention Act.
- "In the federal system the sentencing guidelines are responsible in part for the increase in prison terms. In my view, the guidelines were, and are, necessary. Before they were in place, a wide disparity existed among the sentences given by different judges, and even among sentences given by a single judge. As my colleague Justice Breyer has pointed out, however, the compromise that led to the guidelines led also to an increase in the length of prison terms. We should revisit this compromise. The federal sentencing guidelines should be revised downward. By contrast to the guidelines, I can accept neither the necessity nor the wisdom of federal mandatory minimum sentences. In too many cases, mandatory minimum sentences are unwise and unjust."
Justice Anthony M. Kennedy, speech made at the American Bar Association Annual Meeting, August 9, 2003.
- "By using highly selective data on a few emotionally-charged cases accompanied by anecdotes containing selective recitations of the facts, an argument has been made that downward departures are overused. Those advancing this argument suggest that judges are abusing their departure authority. The Committee does not believe that this is true. Although the percentage of downward departures that is attributable solely to judges cannot be accurately quantified, the Committee believes that the percentage of downward departures made over the objection of the government is very small."
Judge Sim Lake, (S.D. TX) Chair of the Criminal Law Committee of the Judicial Conference of the United States in a letter to GAO, August 28, 2003.
- "The Senate Report that constitutes the principal legislative history of the Sentencing Reform Act stated that "the purpose of the sentencing guidelines is to provide a structure for evaluating the fairness and appropriateness of the sentences for an individual offender, not to eliminate the thoughtful imposition of individualized sentences." The ability to depart was an important, if not major, vehicle to preserve this traditional judicial function. As the guidelines themselves acknowledge repeatedly, in the offense conduct provisions and the criminal history provisions, there simply are too many relevant variables to capture them all in the guidelines themselves. Departures provide the flexibility need to assure adequate consideration of circumstances that the guidelines cannot adequately capture."
Judge David F. Hamilton (S.D.IN), on behalf of the Criminal Law Committee of the Judicial Conference of the United States before the U.S.Sentencing Commission, August 19, 2003.
- "Every sentence imposed affects a human life and, in most cases, the lives of several innocent family members who suffer as a result of a defendant's incarceration. For a judge to be deprived of the ability to consider all of the factors that go into formulating a just sentence is completely at odds with the sentencing philosophy that has been the hallmark of the American justice system."
Judge John S. Martin, Jr. (S.D.NY) in a column in the New York Times, June 24, 2003.